UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

WILLIAM FERNANDEZ and RIGOBERTO SANTANA, individually and on behalf of all others similarly-situated

Plaintiffs,

v.

SHARP MANAGEMENT CORPORATION,

Defendant.

Docket No. 16 Civ. 551

COMPLAINT

JURY TRIAL DEMANDED

Plaintiffs William Fernandez and Rigoberto Santana (collectively, "Plaintiffs"), by and through their attorneys at the Filosa Law Firm, PLLC, as and for their Complaint in this action against Defendant Sharp Management Corporation ("Defendant" or "Sharp Management" or the "Company") allege upon personal knowledge and upon information and belief as to other matters as follows:

NATURE OF THE CLAIMS

1. This is a collective action brought by Plaintiffs, residential building superintendents employed by Defendant, on their own behalf and on behalf of the proposed classes identified below, against Defendant, a property management company that does business in New York, New Jersey, and Connecticut, for failure to pay Plaintiffs and the members of the proposed class in accordance with the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 201, *et seq.,* and New York Labor Law ("NYLL").

2. Plaintiffs bring this collective and class action to recover (i) minimum wage and overtime compensation that Defendant failed to pay Plaintiffs and the members of the proposed classes pursuant to the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 201, *et seq*., and the New York Labor Law ("NYLL") and (ii) damages related to Defendant's failure to provide Plaintiffs with accurate wage statements and notices required by NYLL § 195.

3. Plaintiffs seek to represent a class made up of all persons who are or have been employed by Defendant as a Resident Manager, Superintendent, Assistant Maintenance Personnel, Security Staff, Janitor, Porter, or other similar job title, at any of the properties managed by Defendant during the applicable statute of limitations period under both the FLSA and NYLL.

JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 as this case is brought under the FLSA. The Court has supplemental jurisdiction over Plaintiffs' state law claims pursuant to 28 U.S.C. § 1367.

5. Venue is proper in this Court pursuant to 28 U.S.C. § 1391, because the wage violations which gave rise these claims primarily occurred in this District.

6. Plaintiffs' claims are properly consolidated as a single action because their claims involve the same Defendant, arise from the same nexus of facts and circumstances, and involve nearly identical issues of fact and law.

THE PARTIES

7. Plaintiff William Fernandez resides in New York County, New York. Plaintiff Fernandez was employed by Defendant from in or around March 2011 through December 7, 2015 as the residential superintendent for the building that Defendant manages that is located on

224 West 141st Street in Manhattan. At all relevant times, Plaintiff Fernandez was an "employee" within the meaning of the FLSA and NYLL.

8. Plaintiff Rigoberto Santana resides in New York County, New York. Plaintiff Santana was employed by Defendant from in or around May 2014 through December 7, 2015 as the residential superintendent for the building that Defendant manages that is located at 55 West 129th Street in Manhattan. At all relevant times, Plaintiff Santana was an "employee" within the meaning of the FLSA and NYLL.

9. Defendant Sharp Management Corporation a domestic business corporation organized and existing under the laws of the State of New York with its principal place of business located at 1085 E. 12th Street, Brooklyn, NY 11230. At all relevant times, Defendant Sharp Management Corporation was an "employer" within the meaning of the FLSA and NYLL.

COLLECTIVE ACTION ALLEGATIONS

10. Plaintiffs bring this action on behalf of themselves and other employees similarly situated, as authorized under 29 U.S.C. § 216(b). The employees similarly-situated are:

> **FLSA Collective Action:** All persons who are or have been employed by Defendant as a Resident Manager, Superintendent, Assistant Maintenance Personnel, Security Staff, Janitor, Porter, or other similar job title at any location operated by Defendant anywhere in the United States from three (3) years prior to this action's filing date through the date of the final disposition of this action and who were subject to Defendant's unlawful practice of (i) failing to pay the applicable minimum wage and (ii) failing to pay overtime compensation for all hours worked in excess of 40 hours per workweek.

11. Defendant employed Plaintiffs and the members of the FLSA Collective Action during the time period relevant to the FLSA Collective Action; however, Defendant misclassified Plaintiffs and the members of the FLSA Collective Act as salaried employees.

12. During the FLSA Collective Action Period, upon information and belief, Defendant employed more than 100 employees who fall within the FLSA Collective Action.

13. Defendant meets the definition of an "employer" under the FLSA. By way of example only, Defendant's website claims that, as part of Defendant's service to property owners, Defendant handles all employee supervision and touts the fact that "All Building Employees including Resident Manager, Superintendent, Assistant Maintenance Personnel, and Security Staff are hired under the direct supervision of the Property Manager. Written job specifications and job outlines detailing each person's responsibilities are supplied and carefully supervised. Personnel salaries are carefully controlled, in line with budgetary requirements."

14. Defendant controlled how much the FLSA Collective Action members are/were paid, maintained all time and pay records for the FLSA Collective Action members, assigned and supervised all of the tasks given to the FLSA Collective Action members, and/or maintained and exercised control as to how the FLSA Collective members were to perform their tasks.

15. Each of the FLSA Collective Action members are or were non-exempt employees entitled to overtime compensation for all hours worked in excess of 40 hours per workweek. However, Defendant misclassified them as salaried, exempt employees and, as a result, failed to pay Plaintiffs and the FLSA Collective Action members any overtime premiums when they worked in excess of 40 hours in a given workweek.

16. Because Defendant paid Plaintiffs and the FLSA Collective Action members on a salary basis without regard to the number of hours that they actually worked, Defendant regularly failed to pay Plaintiffs and the FLSA Collective Action members the applicable minimum wage required by the FLSA.

17. Defendant's conduct, as set forth in this Complaint, was willful and in bad faith, and has caused significant damages to Plaintiffs and the FLSA Collective Action members.

18. Defendant is liable under the FLSA for failing to properly compensate Plaintiffs and the FLSA Collective Action members and, as such, notice should be sent to the FLSA Collective Action members. There are potentially more than 100 similarly situated current and former employees of Defendant who were subject to the aforementioned policies in violation of the FLSA who would benefit from the issuance of a Court-supervised notice of the present lawsuit and the opportunity to join in the present lawsuit. Those similarly situated individuals are known to Defendant and are readily identifiable through Defendant's records.

CLASS ACTION ALLEGATIONS

19. Plaintiffs bring this action as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of the following defined class:

> **New York Class:** All persons who are or have been employed by Defendant as a Resident Manager, Superintendent, Assistant Maintenance Personnel, Security Staff, Janitor, Porter, or other similar job title at any location operated by Defendant in New York from six (6) years prior to this action's filing date through the date of the final disposition of this action and who were subject to Defendant's unlawful practice of (i) failing to pay the applicable minimum wage required by the Minimum Wage Order for the Building Service Industry for all hours worked, (ii) failing to pay overtime compensation for all hours worked in excess of 40 hours per workweek, (iii) failing to furnish wage statements that specifically enumerated certain criteria, as required by NYLL § 195(3).

20. At all times during the time period relevant to the New York Class, Defendant, as a matter of policy, (i) did not pay Plaintiffs or the New York Class the applicable minimum wage required by the Minimum Wage Order for the Building Service Industry ("Minimum Wage Order"), (ii) did not pay Plaintiffs or the New York Class overtime premium pay for all hours

worked in excess of 40 hours per workweek when required by the Minimum Wage Order, and (iii) failed to furnish correct and accurate wage statements required by the NYLL.

21. The facts as alleged in Paragraphs 11-18 with respect to the FLSA Collective Action are similarly true for the New York Class during the time period relevant to the New York Class.

22. Defendant failed to make, keep and/or preserve accurate records with respect to Plaintiffs and the New York Class and failed to furnish to Plaintiffs and the New York Class an accurate statement an appropriate statement of wages, in violation of the NYLL and supporting New York State Department of Labor regulations.

23. Numerosity: The proposed New York Class is so numerous that joinder of all members is impracticable. Upon information and belief, during the relevant time period, Defendant employed hundreds of people who fall within the New York Class and thus satisfy the numerosity definition of the proposed New York Class.

24. Typicality: Plaintiffs' claims are typical of the members of the proposed New York Class. During the New York Class period, Defendant subjected Plaintiffs and the members of the New York Class to same policy and practice of failing to pay them minimum wage and overtime compensation required by the Minimum Wage Order.

25. Superiority: A class action is superior to other available methods for the fair and efficient adjudication of the controversy.

26. Adequacy: Plaintiffs will fairly and adequately protect the interests of the proposed New York Class and have retained counsel experienced in FLSA and NYLL class and collective action litigation.

27. Commonality: Common questions of law and fact exist with respect to all members of the proposed New York Class that predominate over any questions solely affecting individual members of the proposed New York Class, including but not limited to:

a. Whether Defendant violated the NYLL as alleged herein;

b. Whether Defendant unlawfully failed to pay the applicable minimum wage to members of the New York Class in violation of the NYLL;

c. Whether Defendant unlawfully failed to pay appropriate overtime compensation to members of the New York Class in violation of NYLL;

d. Whether Defendant employed Plaintiffs and the New York Class within the meaning of New York law;

e. Whether Defendant should be enjoined from continuing the practices that violate the NYLL;

f. What the proper measure of damages sustained by the New York Class are; and

g. Whether Defendant's actions were "willful."

28. The case is maintainable as a class action under Fed. R. Civ. P. 23(b)(1) because prosecution of actions by or against individual members of the class could result in inconsistent or varying adjudications and create the risk of incompatible standards of conduct for Defendant. Further, adjudication of each individual member's claim as a separate action would be dispositive of the interest of other individuals not party to this action, impeding their ability to protect their interests.

29. Class certification is also appropriate under Fed. R. Civ. P. 23(b)(3) because questions of law and fact common to the New York Class predominate over any questions

affecting only individual members, and because a class action is superior to other available methods for the fair and efficient adjudication of this litigation. Defendant's common and uniform policies and practices denied the New York Class the wages to which they are entitled. The damages suffered by the New York Class members are small compared to the expense and burden of individual prosecution of this litigation. In addition, class certification is superior because it will obviate the need for unduly duplicative litigation that might result in inconsistent judgments about Defendant' practices.

30. Plaintiffs intend to send notice to all members of the New York Class to the extent required by Rule 23. The names and addresses of the New York Class are available from Defendant.

INDIVIDUAL FACTUAL ALLEGATIONS

Plaintiff Fernandez

31. As outlined above, Defendant employed Plaintiff Fernandez as a Superintendent at Defendant's 224 West 141st location in Manhattan from approximately March 2011 through December 7, 2015.

32. Throughout the course of his employment, Defendant paid Plaintiff Fernandez a salary of $350 per week, regardless of the number of hours that he worked.

33. During the course of his employment with Defendant, Plaintiff Fernandez resided in an apartment in Defendant's 224 West 141st location. Plaintiff Fernandez was provided this residence by Defendant for the express purpose of being available to provide services on a 24-hour basis.

34. In this position, Plaintiff Fernandez was not only responsible for performing maintenance work and clean up at Defendant's 224 West 141st location, but was also frequently required by Defendant to perform work at other Company properties.

35. Defendant never paid Plaintiff Fernandez any additional compensation for work that he performed at these other Company properties.

36. Plaintiff Fernandez typically worked long hours and was called to perform work for the Company at all hours of the day and night. Plaintiff Fernandez estimates that, on average, he spent 35 hours per week working at the Company's West 141st location and another 56 hours per week working at other Company properties.

37. Defendant was aware of the work that Plaintiff Fernandez was performing and the hours that he was working. Indeed, Defendant required Plaintiff Fernandez to be on call 24 hours a day, 7 days per week. As a result, Plaintiff Fernandez was required to respond to calls from residents of Defendant's buildings at all hours of the day and night.

38. Defendant never paid Plaintiff Fernandez any additional compensation for working in excess of 40 hours per week in a given workweek.

Plaintiff Santana

39. As outlined above, Defendant employed Plaintiff Santana as a Superintendent at Defendant's 55 West 129th Street location in Manhattan from approximately May 2014 through December 7, 2015.

40. Throughout the course of his employment, Defendant paid Plaintiff Santana a salary of $500 per week, regardless of the number of hours that he worked.

41. During the course of his employment with Defendant, Plaintiff Santana resided in an apartment at Defendant's 55 West 129th Street location. Plaintiff Santana was provided this

residence by Defendant for the express purpose of being available to provide services on a 24-hour basis.

42. In this position, Plaintiff Santana was not only responsible for performing maintenance work and clean up at Defendant's 55 West 129th Street location, but was also frequently required by Defendant to perform work at other Company properties.

43. Defendant never paid Plaintiff Santana any additional compensation for work that he performed at these other Company properties.

44. Plaintiff Santana typically worked long hours and was called to perform work for the Company at all hours of the day and night. Plaintiff Santana estimates that, on average, he spent 30 hours per week working at the Company's 55 West 129th Street location and another 56 hours per week working at other Company properties.

45. Defendant was aware of the work that Plaintiff Santana was performing and the hours that he was working. Indeed, Defendant required Plaintiff Santana to be on call 24 hours a day, 7 days per week. As a result, Plaintiff Santana was required to respond to calls from residents of Defendant's buildings at all hours of the day and night.

46. Defendant never paid Plaintiff Santana any additional compensation for working in excess of 40 hours per week in a given workweek.

FIRST CAUSE OF ACTION
(FLSA: Unpaid Minimum Wage)

47. Plaintiffs allege and incorporate by reference the allegations in the preceding paragraphs.

48. As outlined above, during the relevant time period, Defendant's practices violated the provisions of the FLSA regarding payment of a minimum wage to Plaintiffs and the members

of the FLSA Collective Action by, among other things, failing to pay them the applicable minimum wage for all hours worked.

49. Accordingly, Plaintiffs and the members of the FLSA Collective Action are entitled to the difference between the wages paid by Defendant and the FLSA minimum wage as damages for Defendant's violations of the FLSA's minimum wage provisions.

50. The foregoing conduct, as alleged, constitutes a willful violation of the FLSA, within the meaning of 29 U.S.C §§ 216(b) and 255(a).

51. Plaintiffs and the members of the FLSA Collective Act seek recovery of their attorneys' fees and costs to be paid by Defendant, as provided by the FLSA, 29 U.S.C. § 216(b), and such other legal and equitable relief as the Court deems just and proper.

SECOND CAUSE OF ACTION
(FLSA: Failure to Pay Overtime Compensation)

52. Plaintiffs allege and incorporate by reference the allegations in the preceding paragraphs.

53. During the relevant time period, Plaintiffs and the members of the FLSA Collective Action worked in excess of forty hours per workweek and, because of Defendant's above-outlined violations of the FLSA, were not paid appropriate overtime compensation.

54. Despite the hours worked by Plaintiffs and the members of the FLSA Collective Action, Defendant willfully, in bad faith, and in knowing violation of the FLSA, failed and/or refused to pay Plaintiffs and the members of the FLSA Collective Action appropriate overtime compensation.

55. The foregoing conduct, as alleged, constitutes a willful violation of the FLSA, within the meaning of 29 U.S.C §§ 216(b) and 255(a).

56. Plaintiffs and the members of the FLSA Collective Action seek recovery of their attorneys' fees and costs to be paid by Defendant, as provided by the FLSA, 29 U.S.C. § 216(b), and such other legal and equitable relief as the Court deems just and proper.

THIRD CAUSE OF ACTION
(NYLL: Unpaid Minimum Wage)

57. Plaintiffs allege and incorporate by reference the allegations in the preceding paragraphs.

58. As outlined above, Defendant's pay practices failed to pay Plaintiffs and the members of the New York Class a minimum wage required by the NYLL and the Minimum Wage Order.

59. Accordingly, Plaintiffs and the members of the New York Class are entitled to the difference between the NYLL minimum wage and the wages paid by Defendant as damages for Defendant' violations of the NYLL and Minimum Wage Order's minimum wage provisions.

60. The foregoing conduct, as alleged, constitutes a willful violation of the NYLL without a good faith basis, within the meaning of NYLL § 198, and as a result Plaintiffs and the members of the New York Class are entitled to liquidated damages and such other legal and equitable relief as the Court deems just and proper.

61. Plaintiffs and the members of the New York Class also seek to have their reasonable attorneys' fees and costs paid by Defendant, as provided by the NYLL.

FOURTH CAUSE OF ACTION
(NYLL: Failure to Pay Overtime Compensation)

62. Plaintiffs allege and incorporate by reference the allegations in the preceding paragraphs.

63. During the relevant time period, Plaintiffs and the members of the New York Class worked in excess of forty hours per workweek and, because of Defendant's above-outlined violations of the NYLL, were not paid appropriate overtime compensation.

64. Despite the hours worked by Plaintiffs and the members of the New York Class, Defendant willfully, in bad faith, and in knowing violation of the NYLL, failed and/or refused to pay them appropriate overtime compensation.

65. The foregoing conduct, as alleged, constitutes a willful violation of the NYLL without a good faith basis, within the meaning of NYLL § 198, and as a result Plaintiffs and the members of the New York Class are entitled to liquidated damages and such other legal and equitable relief as the Court deems just and proper.

66. Plaintiffs and the members of the New York Class also seek to have their reasonable attorneys' fees and costs paid by Defendant, as provided by the NYLL.

FIFTH CAUSE OF ACTION
(NYLL: Failure to Furnish Wage Statements)

67. Plaintiffs allege and incorporate by reference all allegations in all preceding paragraphs, as if fully set forth herein.

68. During the relevant time period, Defendant failed to furnish Plaintiffs and the members of the New York Class with accurate wage statements that specifically enumerated certain criteria, as required by NYLL § 195(3).

69. Defendant's violation of the NYLL was willful and, as a result, Defendant is liable to Plaintiffs and the members of the New York Class in the amount of $5,000 for each violation.

70. In addition to statutory penalties, Plaintiffs and the members of the New York Class are entitled to recover from Defendant reasonable attorneys' fees and costs of the action, and pre-judgment and post-judgment interest.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on behalf of themselves and all members of the proposed FLSA Collective Action and New York Class, pray for the following relief:

A. That the Court finds Defendant to have violated the provisions of the New York Labor Law as to Plaintiffs and the members of the New York Class;

B. That the Court finds Defendant to have violated the Fair Labor Standards Act as to Plaintiffs and the members of the FLSA Collective Action;

C. That the Court determines that this action may proceed as a collective action pursuant to 29 U.S.C. § 216(b);

D. That the Court determines that this action may proceed as a class action pursuant to Fed. R. Civ. P. 23.

E. That the Court determine that Defendant's violations were willful;

F. An award to Plaintiffs and the members of the FLSA Collective Action and New York Class for the amount of unpaid wages owed, including interest thereon, and penalties, including liquidated damages, subject to proof at trial;

G. An award of liquidated damages in an amount to be determined at trial pursuant to 29 U.S.C. § 2617(a)(1)(A)(iii);

H. An award of liquidated damages pursuant to the NYLL;

I. That Court find that Defendant must cease and desist from unlawful activities in violation of the FLSA and NYLL;

J. An award of reasonable attorneys' fees and costs pursuant to the NYLL and 29 U.S.C. § 216 and/or other applicable law; and/or

K. Any such other and further relief, in law or equity, as this Court may deem appropriate and just.

DEMAND FOR TRIAL BY JURY

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiffs demand a trial by jury as to all issues so triable.

Dated: January 25, 2016

FILOSA LAW FIRM, PLLC

By: ______________________

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